

3.804

in the subcontract file of the awarding contractor.

[55 FR 3190, Jan. 30, 1990, as amended at 55 FR 38516, Sept. 18, 1990]

3.804 Policy.

(a) The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding \$100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

3.805 Exemption.

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this section whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of such exemption to Congress immediately after making such a determination.

3.806 Processing suspected violations.

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

3.807 Civil penalties.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804-3808, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

[55 FR 3190, Jan. 30, 1990, as amended at 67 FR 6120, Feb. 8, 2002]

3.808 Solicitation provision and contract clause.

(a) The provision at 52.203-11, Certification and Disclosure Regarding Pay-

48 CFR Ch. 1 (10-1-05 Edition)

ments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed \$100,000.

(b) The clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed \$100,000.

Subpart 3.9—Whistleblower Protections for Contractor Employees

SOURCE: 60 FR 37776, July 21, 1995, unless otherwise noted.

3.900 Scope of subpart.

This subpart implements 10 U.S.C. 2409 and 41 U.S.C. 251, *et seq.*, as amended by Sections 6005 and 6006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355).

3.901 Definitions.

As used in this subpart—

Authorized official of an agency means an officer or employee responsible for contracting, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract.

Authorized official of the Department of Justice means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

Inspector General means an Inspector General appointed under the Inspector General Act of 1978, as amended. In the Department of Defense that is the DOD Inspector General. In the case of an executive agency that does not have an Inspector General, the duties shall be performed by an official designated by the head of the executive agency.

[48 FR 42108, Sept. 19, 1983, as amended at 66 FR 2127, Jan. 10, 2001]

3.902 Applicability.

This subpart applies to all Government contracts.

3.903 Policy.

Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized

Federal Acquisition Regulation

3.906

official of an agency or of the Department of Justice, relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

3.904 Procedures for filing complaints.

(a) Any employee of a contractor who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may file a complaint with the Inspector General of the agency that awarded the contract.

(b) The complaint shall be signed and shall contain—

- (1) The name of the contractor;
- (2) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;
- (3) The substantial violation of law giving rise to the disclosure;
- (4) The nature of the disclosure giving rise to the discriminatory act; and
- (5) The specific nature and date of the reprisal.

3.905 Procedures for investigating complaints.

(a) Upon receipt of a complaint, the Inspector General shall conduct an initial inquiry. If the Inspector General determines that the complaint is frivolous or for other reasons does not merit further investigation, the Inspector General shall advise the complainant that no further action on the complaint will be taken.

(b) If the Inspector General determines that the complaint merits further investigation, the Inspector General shall notify the complainant, contractor, and head of the contracting activity. The Inspector General shall conduct an investigation and provide a written report of findings to the head of the agency or designee.

(c) Upon completion of the investigation, the head of the agency or designee shall ensure that the Inspector General provides the report of findings to—

- (1) The complainant and any person acting on the complainant's behalf;
- (2) The contractor alleged to have committed the violation; and
- (3) The head of the contracting activity.

(d) The complainant and contractor shall be afforded the opportunity to submit a written response to the report of findings within 30 days to the head of the agency or designee. Extensions of time to file a written response may be granted by the head of the agency or designee.

(e) At any time, the head of the agency or designee may request additional investigative work be done on the complaint.

3.906 Remedies.

(a) If the head of the agency or designee determines that a contractor has subjected one of its employees to a reprisal for providing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, the head of the agency or designee may take one or more of the following actions:

(1) Order the contractor to take affirmative action to abate the reprisal.

(2) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(3) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(b) Whenever a contractor fails to comply with an order, the head of the agency or designee shall request the Department of Justice to file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(c) Any person adversely affected or aggrieved by an order issued under this section may obtain review of the order's conformance with the law, and this subpart, in the United States